

**APPENDIX.****State Laws Involved.**

## 1.

The lands in the Pisgah National Game Preserve were acquired by the United States pursuant to State consent given by Chapter 17, Public Laws of North Carolina of 1901, page 157, which is as follows:

"AN ACT TO GIVE CONSENT OF THE STATE OF NORTH CAROLINA TO THE ACQUISITION BY THE UNITED STATES OF SUCH LANDS AS MAY BE NEEDED FOR THE ESTABLISHMENT OF A NATIONAL FOREST RESERVE IN SAID STATE.

"Whereas, it is proposed that the Federal Government purchase lands in the high mountain regions of Western North Carolina and adjacent States, for the purpose of establishing there a National Forest Reserve which will perpetuate these forests and forever preserve the headwaters of many important streams, and which will thus prove of great and permanent benefit to the people of this State; and

"Whereas, a bill has been introduced in the Federal Congress providing for the purchase of such lands for said purpose; therefore,

"THE GENERAL ASSEMBLY OF NORTH CAROLINA DO ENACT:

"Section 1. That the consent of the General Assembly of North Carolina be and is hereby given to the acquisition by the United States by purchase, or by condemnation with adequate compensation, except as hereinafter provided, of such lands in Western North Carolina as in the opinion of the Federal Government may be needed for the establishment of such a national forest reserve in that region: Provided, that the State of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State of North Carolina against any person charged with the com-

mission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this act had not been passed.

"Section 2. That power is hereby conferred upon Congress to pass such laws as it may deem necessary to the acquisition as hereinbefore provided, for incorporation in said national forest reserve, such forest covered lands lying in Western North Carolina as in the opinion of the Federal Government may be needed for this purpose: Provided, that as much as two hundred acres of any tract of land occupied as a home by bona fide residents in this State at the date of the ratification of this act shall be exempt from the provisions of this section.

"Section 3. Power is hereby conferred upon Congress to pass such laws and to make or provide for the making of such rules and regulations, of both civil and criminal nature and provide punishment therefor, as in its judgment may be necessary for the management, control, and protection of such lands as may be from time to time acquired by the United States under the provisions of this act.

"Section 4. That this act shall be in force from and after its ratification.

"In the General Assembly read three times and ratified this the 18th day of January, A. D., 1901."

## 2.

In 1915 the General Assembly of North Carolina, by Chapter 205, North Carolina Public Laws of 1915, page 284, consented to the making of Federal rules and regulations in respect to game on Western North Carolina lands acquired under the Weeks Act, which is as follows:

"AN ACT TO GIVE THE CONSENT OF THE STATE OF NORTH CAROLINA TO THE MAKING BY THE CONGRESS OF THE UNITED STATES, OR UNDER ITS AUTHORITY, OF ALL SUCH RULES AND REGULATIONS AS IN THE OPINION OF THE FEDERAL GOVERNMENT MAY BE NEEDFUL IN RESPECT TO GAME ANIMALS, GAME AND NON-GAME BIRDS, AND FISH ON LANDS, AND IN OR ON THE

WATERS THEREON, ACQUIRED OR TO BE ACQUIRED BY THE FEDERAL GOVERNMENT IN THE WESTERN PART OF NORTH CAROLINA FOR THE CONSERVATION OF THE NAVIGABILITY OF NAVIGABLE RIVERS.

“Whereas, the Government of the United States, with the consent of the General Assembly of the State of North Carolina, has acquired and will acquire areas of forested land in the western part of said State for the purpose of conserving the navigability of navigable streams, and said lands and waters thereon are and will be stocked, naturally and artificially, with game animals, game and non-game birds, and fish; and

“Whereas, in order adequately to enjoy and protect the occupancy and use of said areas, it is important that the United States be fully authorized to make all needful rules and regulations in respect to such animals, birds, and fish: Therefore,

“THE GENERAL ASSEMBLY OF NORTH CAROLINA DO ENACT:

“Section 1. That the consent of the General Assembly of North Carolina be, and hereby is, given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the Federal Government shall determine to be needful in respect to game animals, game and non-game birds, and fish, on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the Act of Congress of March first, one thousand nine hundred and eleven, entitled ‘An act to enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers’ (Thirty-sixth United States Statutes at Large, page nine hundred and sixty-one), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

“In the General Assembly read three times and ratified this 9th day of March, 1915.”

## 3.

In 1933, by Section 2 of Chapter 537, North Carolina Public Laws of 1933, Chapter 537, page 886, the General Assembly declared the foregoing Act of 1915 should not be construed to deprive the State of its vested right to collect from hunters licenses from hunters on Federal lands in Western North Carolina, said Section being as follows:

"Section 2. That no wording in Section two thousand and ninety-nine, Consolidated Statutes, nineteen nineteen, or any other North Carolina Statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government owned land or in any government owned stream in North Carolina including the license for County, State or non-resident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the Federal Government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains Natural Park to be excepted from this act."

## 4.

"The North Carolina Game Law of 1935," Chapter 486, Public Laws of North Carolina, Session of 1935, page 853, *et seq.*, amended, codified, and reenacted the existing general game laws of the State. Its pertinent provisions are summarized as follows:

(a) Section 2, page 853, defines the unlawful "taking" of "game animals" to "include pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting" of game animals in the open season, game animals being defined by the Section to include deer.

(b) Section 12, page 860, prescribes stated amounts to be paid for "hunting licenses," forbids the taking of game without a license, and provides that the license shall authorize the taking of game only "during the periods of the year when it shall be lawful."

(c) Section 16, page 864, provides that the open season for the taking of male deer shall be from October 1 to January 1 of each year, subject to changes by the Board of Conservation and Development. In the years here in question no changes in the open season for deer were made by the Board. The law provides no open season for female deer. The Act makes it unlawful to take deer in the closed season.

(d) Section 4(5) authorizes the State game authorities to make cooperative game agreements with the Federal authorities for the development and management of game.

(e) Section 4(c) authorizes the State game authorities to issue permits to kill game animals "which may become seriously injurious to agriculture or other interests in any particular community."

(f) Section 19 makes unlawful the possession or transportation of dead game animals during the closed season.

(g) Section 22 makes it unlawful for any common carrier to transport or receive any game animal for shipment unless the shipper is a licensed hunter, and authorizes a licensed hunter during open season to transport in or out of the State game animals lawfully taken and possessed.

(h) Section 25 provides that violation of any provisions of the law shall be a misdemeanor, punishable as therein provided.

(i) Under the broad powers bestowed by the Act, and as it has been officially interpreted and applied, the State game officials have power to authorize officials of the United States Forest Service to take, trap, possess, ship, or transport deer in or out of season.

## 5.

In 1939 the General Assembly of North Carolina enacted that its law of 1915, *supra*, now North Carolina Consolidated Statutes, Section 2099, should not be construed as



conveying the State's ownership of game on Federal lands in the State acquired under the Weeks Act or to permit hunting thereon except in accordance with the State Game Law of 1935, which reenacted prior laws, it being as follows:

"AN ACT TO AMEND CONSOLIDATED STATUTES TWO THOUSAND AND NINETY-NINE, VOLUME ONE, ONE THOUSAND NINE HUNDRED AND NINETEEN, RELATIVE TO THE REGULATION OF GAME ANIMALS, GAME AND NON-GAME BIRDS AND FISH ON GAME PRESERVES IN NORTH CAROLINA.

"THE GENERAL ASSEMBLY OF NORTH CAROLINA DO ENACT:

"Section 1. That Consolidated Statutes two thousand and ninety-nine, Volume one, one thousand nine hundred and Nineteen (The Act of 1915, *supra*), be amended by adding a new paragraph at the end thereof to read as follows:

'Nothing in this Act shall be construed as conveying the ownership of wild life from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or non-game birds and fish, by any person, firm, or corporation, including any agency, department or instrumentality of the United States Government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any Act of Congress, except in accordance with the provisions of Chapter four hundred and eighty-six, Public Laws of one thousand nine hundred and thirty-five.'

"Section 2. Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States Government, violating the provisions of this Act shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

"Section 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

"Section 4. This Act shall be in full force and effect from and after its ratification.

"In the General Assembly read three times and ratified, this the 3rd day of March, 1939."

**Federal Laws Involved.**

## 1.

The lands in question were acquired by the United States under the Weeks Act of March 1, 1911, Chapter 186, 36 Stat. 961, Sections 6, 7, 11, and 12, 36 Stat. 961, 962, 963, 16 U. S. C., Sections 515, 516, 521, and 480, the pertinent provisions of which are as follows:

“Chapter 186.—An Act To Enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers.

\* \* \* \* \*

“Section 6. That the Secretary of Agriculture is hereby authorized and directed to examine, locate, and recommend for purchase such lands as in his judgment may be necessary to the regulation of the flow of navigable streams, and to report to the National Forest Reservation Commission the results of such examinations; Provided, That before any lands are purchased by the National Forest Reservation Commission said lands shall be examined by the Geological Survey and a report made to the Secretary of Agriculture, showing that the control of such lands will promote or protect the navigation of streams on whose watersheds they lie.

“Section 7. That the Secretary of Agriculture is hereby authorized to purchase in the name of the United States, such lands as have been approved for purchase by the National Forest Reservation Commission at the price or prices fixed by said commission; Provided, That no deed or other instrument of conveyance shall be accepted or approved by the Secretary of Agriculture under this Act until the legislature of the State in which the land lies shall have consented to the acquisition of such land by the United States for the purpose of preserving the navigability of navigable streams.

\* \* \* \* \*

"Section 11. That, subject to the provisions of the last preceding section, the lands acquired under this Act shall be permanently reserved, held, and administered as national forest lands under the provisions of section twenty-four of the Act approved March third, eighteen hundred and ninety-one (volume twenty-six, Statutes at Large, page eleven hundred and three), and Acts supplemental to and amendatory thereof. And the Secretary of Agriculture may from time to time divide the lands acquired under this Act into such specific national forests and so designate the same as he may deem best for administrative purposes.

"Section 12. That the jurisdiction, both civil and criminal, over persons upon the lands acquired under this Act shall not be affected or changed by their permanent reservation and administration as national forest lands, except so far as the punishment of offenses against the United States is concerned, the intent and meaning of this section being that the State wherein such land is situated shall not, by reason of such reservation and administration, lose its jurisdiction nor the inhabitants thereof their rights and privileges as citizens or be absolved from their duties as citizens of the State."

## 2.

Since 1897 Congress has repeatedly enacted and declared that the States should retain their jurisdiction over the game on the lands within the National Forests in their borders and that Federal Forest Officials should aid in the enforcement of State game laws therein, those enactments being as follows:

(a) The Act of June 4, 1897, 30 Stat., pp. 11 to 62, contains at pages 34 to 36 thereof the following provisions:

"All public lands heretofore designated and reserved by the President of the United States under the provisions of the Act approved March third, eighteen hundred and ninety-one, \* \* \* and all public lands that may hereafter be set aside and reserved as public forest reserves under said Act, shall be as far as practicable controlled and administered in accordance with the following provisions:

\* \* \* \* \*



"The Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been set aside or which may be hereafter set aside under the said Act of March third, eighteen hundred and ninety-one, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provision of this act or of such rules and regulations shall be punished as is provided for in the Act of June fourth, eighteen hundred and eighty-eight, \* \* \*

\* \* \* \* \*

"The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

(b) The Act of March 3, 1899, 30 Stat., Ch. 423, p. 1074, at 1095, now U. S. Code, Title 16, Sec. 553, provides:

"That forest agents, superintendents, supervisors, and all other persons employed in connection with the administration and protection of forest reservations shall in all ways that are practicable, aid in the enforcement of the laws of the State or Territory in which said forest reservation is situated, in relation to the protection of fish and game."

(c) The Act of March 4, 1907, 34 Stat., Ch. 2907, p. 1256, at p. 1269, now U. S. Code, Title 16, Sec. 553, provides:

"Hereafter officials of the Forest Service designated by the Secretary of Agriculture shall, in all ways that are prac-

licable, aid in the enforcement of the laws of the States or Territories \* \* \* for the protection of fish and game."

(d) The Act of May 23, 1908, Chapter 192, 35 Stat. 251, 259, now U. S. Code Section 553, reenacts the provision in the Act of March 4, 1907, above set forth.

3.

The Pisgah National Game Preserve was established by Presidential Proclamation under the authority of the following portion of the Agricultural Appropriation Act of August 11, 1916, Chapter 313, 39 Stat., 446, 476, now 16 U. S. Code, Section 683, to wit:

"That the President of the United States is hereby authorized to designate such areas on any lands which have been, or which may hereafter be, purchased by the United States under the provisions of the Act of March first, nineteen hundred and eleven (Thirty-sixth Statutes at Large, page nine hundred and sixty-one), entitled 'An Act to enable any State to cooperate with any other State or States, or with the United States, for the protection of watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable streams,' and Acts supplementary thereto and amendatory thereof, as should, in his opinion, be set aside for the protection of game animals, birds, or fish; and whoever shall hunt, catch, trap, willfully disturb or kill any kind of game animal, game or nongame bird, or fish, or take the eggs of any such bird on any lands so set aside, or in or on the waters thereof, except under such general rules and regulations as the Secretary of Agriculture may from time to time prescribe, shall be fined not more than \$500 or imprisoned not more than six months, or both."

**Determination and Authorization of Secretary of  
Agriculture.**

The Circuit Court of Appeals sustained the validity of the Determination and Authorization of the Secretary of

Agriculture, dated September 9, 1939, Volume 4, Federal Register, No. 175, page 3883, which reads as follows:

“Determination and Authorization”

“I have considered the information and evidence ad-  
duced by the officers of the Forest Service relative to the  
conditions of the land and deer herd on the Pisgah National  
Game Preserve in the Pisgah National Forest in North  
Carolina, established by proclamation of the President  
issued October 17, 1916, 39 Stat. 1811, and I hereby find  
and determine that the number of deer within the Pisgah  
National Game Preserve is so great that they have caused  
and are causing serious damage and injury to the land  
and forest within the Pisgah National Game Preserve and  
I further find and determine that unless the deer herd is  
reduced the damage and injury to the land and forest will  
continue and grow progressively worse and will result in  
further reducing the forage capacity of the Pisgah National  
Game Preserve for deer;

Now, Therefore, I, Henry A. Wallace, Secretary of Agri-  
culture, pursuant to the authority vested in me by the acts  
of March 1, 1911, C. 186, 36 Stat. 961; February 1, 1905,  
c. 288, 33 Stat. 628, amendatory of the Act of June 4, 1897,  
c. 2, 30 Stat. 11, 35; August 11, 1916, C. 313, 39 Stat. 476;  
to effectuate the purpose of those acts do hereby authorize:

“1. Employees of the Department of Agriculture as-  
signed to duty on the Pisgah National Forest or persons au-  
thorized pursuant to the Regulations of the Secretary of  
Agriculture Relating to the Protection, Occupancy, Use  
and Administration of the National Forest, published in  
the Federal Register of August 15, 1936, to hunt and kill  
deer on the Pisgah National Game Preserve and to remove  
the carcasses of the deer from the Preserve during the  
months of October, November, December, 1939, and Janu-  
ary, 1940, or any part of that period designated by the  
Chief of the Forest Service;

“2. Employees of the Department of Agriculture as-  
signed to duty on Pisgah National Forest to trap, capture  
and ship live deer off the Pisgah National Game Preserve

at any time during the balance of the year 1939 and the year 1940 or any part of that period designated by the Chief of the Forest Service;

"Provided, that the deer shall be removed in such numbers and in such manner, and under such conditions as the Chief of the Forest Service shall find necessary for the preservation and protection of the land and forest, the property of the United States.

Given under my hand and the seal of the United States Department of Agriculture, Washington, D. C., this 9th day of September, 1939.

H. A. WALLACE,  
Secretary of Agriculture."

#### **Senate Debate on Game Preserve Amendment.**

On July 1, 1916, the United States Senate debated the Game Preserve Amendment of August 11, 1916. The Circuit Court of Appeals construed the State Act of 1915, supra —, to grant an exclusive game jurisdiction to the United States and held the debate showed acceptance of such a grant. Portions of the debate are as follows, 53 Cong. Record, page 10, 327-10, 328:

*"Mr. Gore.* (In charge of the bill.)

"I understand that in North Carolina there is a good deal of depredation in the game in the forest reserves, and to prevent this is really the point to be accomplished by this legislation. \* \* \* The Senator from North Carolina (Mr. Overman) can explain the necessity for this provision more fully and forcefully than I can. \* \* \*

*"Mr. Overman.*

"I want to say that in the Appalachian Range the Government has acquired what is known as the Vanderbilt Estate. Mr. Vanderbilt has established a game preserve and the only purpose of this amendment is to protect the

game on that Preserve. \* \* \* The land purchased there constitutes a game preserve. The State of North Carolina has given its consent to this legislation; and it is proposed that the President may set aside that land. We have made it general, however, as to the Appalachian Range reservations under the Weeks Bill, because there might be some land just across the line in Tennessee that it would be desirable to cover. \* \* \*

*“Mr. Jones.*

“Now, there is no suggestion that there is any special need of a game preserve in any of these other places.

*“Mr. Overman.*

“The Senator from New Hampshire wants it to apply to his State.

*“Mr. Jones.*

“He simply suggested that the Weeks Law does apply to it. Now, I do not know whether there is any particular need of a game preserve up there or not.

*“Mr. Overman.*

“I want to say that my amendment that was submitted to the Committee said ‘purchased by the United States in the Western part of North Carolina.’ The Agricultural Committee itself struck that out, so that it might apply to Virginia, Georgia, Tennessee, and New Hampshire and the White Mountains.”

